

REMARKS

With entry of this amendment, claims 6 – 9, 15 – 21, 29 and 30 are pending and claims 1 – 5, 10 – 14, 22 – 28 and 31 – 61 are canceled. Previous claim 28, drawn to a nucleotide sequence encoding or complementary to a sequence encoding amino acid residue numbers 42 to 131 of sequence of SEQ ID NO:10 was indicated as allowable. The recitations of claim 28 have been essentially incorporated into claim 21. Support for the amendments to claims 6, 8, 15 and 17 can be found at Example 1 of the present specification.

Priority Documents

In the Office Action Summary dated August 23, 2002, the Examiner indicated that only “some” of the priority documents had been received. Although the Office Action Summary states that the attached detailed Office Action will list the certified copies not received, there is no mention of any of the priority documents in the Office Action. Applicants note that the PTO, in the Notification of Missing Requirements dated May 8, 2000, stated that the “priority document” had been received. In the next communication from the Examiner, therefore, applicants request that he either acknowledge receipt of all priority documents or indicate which priority documents have not been received.

Information Disclosure Statement

Although the Office Action Summary dated August 23, 2002, indicated that a Form 1449 was attached, applicants have not received the initialed Form 1449 of the IDS filed on July 20, 2000. In his next communication, the Examiner should attach an initialed copy of the Form 1449 of the aforementioned IDS.

Objections to the Claims

Applicants traverse the objection to claim 21, which is said to be an improper dependent claim. Because claim 21 depends from claim 6, all the recitations of the latter are incorporated into the former. Thus, claim 21 necessarily recites “an isolated nucleic acid molecule comprising a nucleotide sequence encoding or complementary to a sequence encoding an amino acid sequence of SEQ ID NO:10 or having at least about 89% or greater identity to SEQ ID NO:10.” That is, the variant in claim 21 is only to the extent of have

sequence having 89% or greater identity to SEQ ID NO:10. Accordingly, claim 21 is not an improper dependent claim.

Claim Rejections Under 35 USC § 112 – Indefiniteness

Applicants traverse the rejection of claim 7 for reciting the phrase “moderate stringency conditions.” Applicants note the low stringency conditions defined in the specification at page 21, lines 21 to 24. With this description in mind, one of skill in the art would be reasonably apprised of the scope of moderate stringency conditions.

With respect to the rejection of claim 7, applicants have followed the Examiner’s suggested claim language, thereby rendering the rejection to this claim moot.

Claim Rejections Under 35 USC § 112 – Written Description

The Examiner has rejected claims 6 – 8, 21 and 22 for lack of written description because the claims contained the phrase “or having at least about 45% or greater identity.” Applicants have amended this phrase to recite “or having at least about 89% or greater identity” to render this rejection moot.

Claim Rejections Under 35 USC § 112 – Enablement

The Examiner has rejected claims 21 and 22 for lack of enablement. Claim 21, which depends from claim 6, recites that present sequences “at least about 89% or greater identity,” thereby rendering the outstanding rejection for enablement moot.

Claim Rejections Under 35 USC § 102

Claim 21 depends from a base claim directed to “an isolated nucleic acid molecule comprising a nucleotide sequence encoding or complementary to a sequence encoding an amino acid sequence of SEQ ID NO:10 or having at least about 89% or greater identity to SEQ ID NO:10.” Therefore the rejection for anticipation is improper and should be withdrawn. Claim 22 have been canceled rendering this rejection moot.

Request for Rejoinder

Under the PCT's standard of unity of invention, a nucleotide sequence of SEQ ID NO:9 and the amino acid sequence it codes for, *i.e.* SEQ ID NO:10, share the same technical feature and therefore restriction between these two sequences is improper. Claim 15 recites “[a]n isolated polypeptide comprising an amino acid sequence of SEQ ID NO:10.” The PTO has agreed Example 17 of the PCT administrative instructions “allows for unity between protein molecule X and DNA that encodes protein molecule X.” (See Decision on Petition, dated October 20, 2003, at page 2.) The currently amended claims recite an nucleotide sequence in claim 6 that encodes the protein molecule of claim 15. Therefore rejoinder of claim 15 to the examined claims is proper.

Conclusion

In view of the foregoing amendments and remarks, it is believed that all claims are in condition for allowance. Reconsideration of all rejections and a notice of allowance are respectfully requested. Should there be any questions regarding this application, the examiner is invited to contact the undersigned attorney at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,



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